IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1048 OF 2004

Shri Vasant Shankar Korgaonkar .. Appellant

Versus

Shtri Krishna Narayan Kubal & ors. Respondents

Mr.N.P.Bhavasr for appellant

CORAM : P.V.KAKADE, J.

DATE : 27TH JUNE, 2005.

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by Addl. District Judge, Sindhudurg dated 18.3.2004 dismissing the appeal of the appellant and confirming the judgment and order passed by Civil Judge, Junior Division, Sawantwadi dated 14.7.1999 dismissing the suit for declaration and injunction in respect of the suit property.

2. I have heard the learned counsel for the appellant. Perused the record.

3. It is a case of the plaintiff that he owns the suit property by virtue of title derived from his maternal aunt one Sajubai, who had purchased the property by Sale Deed in the year 1960. It is a further case of the plaintiff that after Sajubai died without any issue and she had no legal heirs and the plaintiff is only legal heir in respect of the suit property. However, the defendants name are wrongly entered into Mutation record and therefore the suit came to be filed for declaration and injunction.

4. At the outset it may be noted that perusal of the judgment of both the courts below show that there is no substantial question of law involved in this appeal. Moreover, it is apparent from the record as well as after hearing the learned counsel for the appellant that there is no substantial question of law involved and the issues involved are pure question of facts. No doubt it is true that the plaintiff is only legal heir of deceased Sajubai - maternal aunt, and his name is

entered into four properties by virtue of legal heir-ship i.e. Survey Nos.51/1, 80/1, 81/1 and 91/10. However, the entire evidence on record is also sufficient to show that the plaintiff is confused regarding identity of the property and as such is not in a position to show his holding in the respective properties. The plaintiff has admitted in the evidence that in fact at the time of preparation of surveys, his aunt Sajubai showed the Sale Deed to the Enquiry Officers and thereafter the mutations entries were effected. There is no explanation why the suit lands were not mutated in the name of Sajubai. On the other hand the suit lands are seen to be entered into the name of the defendants at the time of initial survey, which was made in the year 1962. In view of this position, it cannot lie in the mouth of the plaintiff that he is owner/possessor of the suit property. In other words, both the courts below have rightly appreciated the evidence on record and have come to the conclusion that the plaintiff has failed to establish his ownership title and possession on the suit property.

. In view of this position it is apparent that this is not a fit case to interfere and as such the

appeal stands dismissed.

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